

Joint Force Headquarters
Kansas National Guard
1 May 2009

TPP 711

LABOR-MANAGEMENT RELATIONS PLAN

Summary of Changes:

- a. Updated current labor terms and references.
- b. Management rights are described.

Applicability. This plan applies to all Kansas Army and Air National Guard Managers and Supervisors, and is intended for internal management use only.

Suggested Improvements. The proponent of this regulation is the Kansas National Guard, Human Resources Office. Users are invited to send comments and suggested improvements to The Adjutant General, Attn: HRO-LRS, 2722 SW Topeka Blvd., Topeka, KS 66611.

*This regulation supersedes TPP 711 dated 1 February 1987.

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CHAPTER 1

GENERAL

1 Purpose. This regulation sets forth Labor-Management Relations policies and procedures within the Kansas National Guard.

2 References.

- a. 5 U.S.C., Chapter 71
- b. DoD 1400.25-M, SC711. Subchapter 711 December 1996
- c. Applicable Collective Bargaining Agreements

3 Explanation of Terms. The glossary explains abbreviations and terms used in this regulation.

4 Basic Principles. The following policies and principles shall govern Labor-Management Relations in the Kansas National Guard:

- a. Effective Labor-Management Relations are a basic part of the responsibility of all managers, at all levels, wherever there are technicians subject to the Federal Service Labor-Management Relations Statute.
- b. Understanding by local managers of authority on human resource policies, practices and matters affecting working conditions helps to ensure meaningful technician participation and to avoid escalation of problems that should be resolved at lower levels.
- c. Managers shall not interfere with the free choice of employees regarding labor organization membership and other representation matters. Under no circumstances shall managers initiate, circulate, or provide assistance in the circulation of a petition to decertify a labor organization holding exclusive recognition, nor shall they poll individual technicians as to their membership in or desire to continue to be represented by such a labor organization.
- d. Managers should take steps to establish positive and constructive relationships with labor organizations selected by technicians to exclusively represent them. The emphasis in dealing with such organizations shall be not only on the resolution of issues and problems that arise at the work site and during negotiations but also on the establishment of relationships and understanding that can help to prevent such problems. When disputes cannot be resolved without third-party assistance, the machinery established by the Statute, including the rules and regulations of the third-party authorities, shall be appropriately complied with and used as expeditiously as possible in order to resolve such disputes.
- e. Labor organizations that exclusively represent technicians have a legitimate interest in matters affecting the conditions of employment of those technicians. To promote positive and constructive labor-management relationships, managers must ensure that appropriate information concerning such matters is

provided to labor organization representatives in a timely manner.

f. Managers shall ensure that the reserved management rights in 5 U.S.C. 7106 (a) are retained. Management may not bargain over the following:

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws-

(a) to hire, assign, direct, layoff, and retain employees in the agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(b) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(c) with respect to filling positions, to make selections for appointments from-

-1. among properly ranked and certified candidates for promotion; or

-2. any other appropriate source; and

(d) to take whatever actions may be necessary to carry out the agency mission during emergencies.

g. Managers must also retain the ability and authority to obtain the highest standards of technician performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of state and national missions.

h. Managers must ensure that negotiated conditions of employment promote equal employment opportunity.

5 Responsibilities.

a. HRO will:

(1) Act for and on behalf of The Adjutant General in developing Kansas National Guard policies and procedures regarding Labor-Management Relations and for coordination of the Labor-Management Relations program and activities throughout the state.

(2) Designate the LRS to carry out the above functions, except for the most critical policy determinations.

b. LRS will:

(1) Be the principal point of contact in conducting labor relations matters with labor organization representatives, management officials and supervisors.

(2) Serve as principal advisor to commanders/management officials and their staffs on labor relations matters.

(3) Participate in all third party proceedings involving labor relations matters and coordinate with appropriate parties on any proposed settlement agreement arising out of such proceedings.

(4) Train management officials and supervisors in their duties, responsibilities, and obligations in the Labor-Management Relations Program. New managers and supervisors will be trained as they are assigned with the primary training document being the collective bargaining agreement.

(5) Forward collective bargaining agreements immediately after completion of negotiations to DoD Civilian Personnel Management Service-Field Advisory Services (DODCPMS-FAS) for approval. Once approved, arrange distribution to all management officials and supervisors and NGB.

(6) Using information supplied by supervisors and labor representatives, approves official time for representational duties pertaining to training and bargaining.

c. Management Officials and Supervisors will:

(1) Remain neutral in matters concerning labor organization membership and representation to the extent required by the law.

(2) Administer the negotiated agreement in the day-to-day work relationship with the local Shop Stewards and bargaining unit members.

(3) Refer matters of significant events to the LRS that involve any labor organization officer or official.

(4) Participate in contract negotiations with labor organization representatives when designated by The Adjutant General.

(5) Participate in third party administrative proceedings as required.

(6) Monitor the use of official time used by labor organization representatives to ensure compliance with the collective bargaining agreement and this plan.

(7) Record Use of Official Time for Representational Functions on time and attendance records when official time is taken. Forward requests for official time for training or collective bargaining to LRS for approval.

d. The State Staff Judge Advocate (SJA) will:

(1) Provide legal support for the labor relations program.

(2) Coordinate with the HRO the terms of any proposed settlement agreement in third party proceedings involving conditions of employment.

6 Training.

a. Managers will attend scheduled labor relations training within six months of the date of appointment into their supervisory position unless equivalent training has already been attended. The New Supervisors course offered by HRO will meet this requirement.

b. An individual designated as Chief Negotiator for the management team must be well-versed in labor relations and therefore, must have undergone appropriate negotiations training prior to the commencement of negotiations.

7 Interpretations (Collective Bargaining Agreement and Regulations).

- a. Managers do not make decisions on contractual intent. These questions are to be directed to the LRS.
- b. Refer all questions as to interpretation of published policies or regulations to the respective HRO representative or to LRS.

8 Conflicts of Interest. To avoid actual or apparent conflicts of interest between Kansas National Guard personnel and their official responsibilities, it is the policy that:

- a. Although the following individuals may join any labor organization, they may not act as a representative of, participate in the management of, or be represented by any such organization that is subject to the Federal Service Labor-Management Relations Statute § 7112:
 - (1) Management officials and supervisors.
 - (2) Confidential technicians (who perform administrative duties for policy making officials).
 - (3) Technicians engaged in personnel work in other than a purely clerical capacity.
 - (4) Technicians engaged in administering the provisions of the Labor-Management Relations Statute.
 - (5) Technicians in Professional Positions.
 - (6) Technicians engaged in intelligence, counterintelligence, investigative, or security work, requiring a minimum security clearance of Top Secret, which directly affects national security.
 - (7) Technicians engaged in investigative or audit functions.
- b. No technician shall carry out any activities, as an officer or agent of a labor organization, that conflicts with or give the appearance of conflicting with the proper exercise of, or are incompatible with, his or her official duties or responsibilities.

CHAPTER 2

RECOGNITION AND DEALINGS WITH LABOR ORGANIZATIONS

1 Solicitation of Membership and Support.

a. Technicians will not be prohibited from soliciting membership in, or support on behalf of or in opposition to, a labor organization on the premises during the non-work time of the technicians involved (i.e., both those engaged in solicitation and those being solicited), provided there is no interference with the work of the activity.

b. Technicians will not be prohibited from distributing literature on behalf of, or in opposition to, a labor organization on the premises in work areas and during the non-work time of the technicians involved (i.e., both those engaged in distribution and those receiving literature), provided there is no interference with the work of the activity.

(1) Literature posted or distributed within the activity must not violate any law, applicable regulations, provisions of the collective bargaining agreement, the security of the activity, or contain libelous material.

(2) Labor organizations will be considered responsible for the content of literature distributed by their representatives.

c. Subject to normal security regulations and reasonable restrictions with regard to the frequency, duration, location(s), and number of persons involved in such activities, labor organization representatives who are not technicians of the activity may be permitted, upon request to and with approval of the HRO, distribute literature or solicit membership or support on activity premises in non-work areas and during non-work time of technicians involved. Permission may be withdrawn with respect to any such distribution or solicitation that interfere with the work of the activity, or with respect to any representative who has engaged in conduct prejudicial to good order or discipline on activity premises.

2 Use of Official Time and Resources.

a. Technicians, if otherwise in a duty status, may use a reasonable amount of official time, subject to supervisory approval and their specific Collective Bargaining Agreement (CBA), to:

(1) Get advice on rights and privileges from official sources (e.g., meet with a representative of the HRO).

(2) Get information on or assistance with grievances from official sources (e.g., get copies of witnesses' statements used to support a disciplinary action).

(3) Prepare grievances (e.g., organizing, materials, writing and typing a grievance).

(4) Present grievances. (Meet with the management officials considering a grievance).

b. The time allowed depends on the facts of the specific case. Reasonable amount of official time is defined as the amount of time the supervisor and the technician agree is required to accomplish the activity for which official time is requested. Disagreement over the amount of time required will be elevated to the LRS.

3 Furnishing of Information.

- a. Representatives from a labor organization who have exclusive recognition are entitled upon request, and to the extent not prohibited by law, to data which is normally maintained by the organization, and which is reasonably available and necessary for full and proper discussion on a subject which falls within the scope of collective bargaining.
- b. Managers should inform labor organization representatives requesting information to forward their written requests to the LRS. The LRS will make a determination as to the relevancy of the requested information, and will respond to the labor organization accordingly.

2-4 Standards of Conduct for Labor Organizations. In any case in which a question arises as to whether the labor organization is in compliance with the Standards of Conduct set forth in 5 U.S.C. 7120, the activity concerned will promptly furnish all available information concerning the matter to the LRS.

5 Payroll Withholding of Labor Organization Dues. Withholding of dues allotments are limited to those technicians who are members of a recognized collective bargaining unit. They are terminated when the technician no longer encumbers a position included in the collective bargaining unit or when voluntarily cancelled by the technician.

6 Right of Representation. The HRO shall inform technicians in bargaining units annually of their right to union representation as required by 5 U.S.C. 7114(a)(2)(B). This notification will be in the January HRO Newsletter.

7 Obligation to Negotiate.

- a. Management and the labor organization are obligated to meet at reasonable times and to negotiate in good faith on conditions of employment affecting those technicians.
- b. The obligation to negotiate is limited by Federal law; any Government-wide rule, regulation or policy; and any rule, regulation or policy issued by the Department of Defense or the cognizant primary national subdivision level (i.e., National Guard Bureau) unless the Federal Labor Relations Authority (FLRA) has determined that no compelling need exists for such a rule, regulation or policy. There is no obligation to negotiate over those matters listed in 5 U.S.C. 7106 (Management Rights) or matters that are not conditions of employment. The obligation extends only to the limits or the discretion of management.

8 Collective Bargaining Agreements (CBA).

- a. Collective bargaining agreements apply only within the unit(s) for which negotiated and shall not be contrary to any Federal law; any Government-wide rules, regulations or policies; or any published rule, regulation, or policy issues by the Department of Defense or the cognizant primary national subdivision in effect as of the effective date of the agreement.
- b. Normally, no agreement will exceed three years in duration from its effective date. An agreement may be renewed or extended for a specified period of time (not to exceed three years / each renewal or extension) when the parties so agree.
- c. Once a CBA has been negotiated and signed, send one paper copy to the LRS and an electronic copy either by e-mail or disk.
- d. Collective bargaining agreements must be sent to DODCPMS-FAS for approval as soon as the parties sign them. Should one or more provisions be determined to conflict with paragraph 2-8a above, DODCPMS-FAS will disapprove the entire agreement and provide notification within 30 days from the date of execution of the agreement of the provisions in conflict.
- e. If a CBA is disapproved, management and labor will immediately meet to work out the language that will make the proposal legal. Management will not make "side bar" agreements on issues not approved by DODCPMS-FAS.

CHAPTER 3

UNFAIR LABOR PRACTICE (ULP) ADMINISTRATIVE PROCEDURES

1 General. Either the labor organizations or management can file an Unfair Labor Practice (ULP) charge or complaint to the FLRA. A ULP occurs when either the labor organization or management violates a protected right or obligation given by the Statute.

2 ULP Charges Filed Against the Kansas National Guard.

a. General Procedures.

(1) To maximize settlement prospects management should discuss the ULP charge and explore its resolution with the labor organization.

(2) The LRS shall promptly investigate all charges, proposed or otherwise, and discuss them with representatives of the labor organization involved to determine all relevant facts and, if possible, produce an acceptable resolution of the matter.

(3) If the Regional Office of the FLRA issues a complaint, the LRS shall promptly notify the Human Resource Office at NGB. The LRS and the State SJA will jointly prepare any case brought to hearing.

b. Management Unfair Labor Practices.

(1) Management officials and supervisors are cautioned to avoid the following actions that could result in a ULP charge:

(a) Interfere with a technician's right to organize.

(b) Encourage or discourage union membership.

(c) Sponsor or control any labor organization.

(d) Discriminate against a technician for union activity.

(e) Refuse to negotiate in good faith.

(f) Refuse to cooperate in impasse proceedings.

(g) Otherwise refuse to comply with any provision of the law.

(2) Management officials and/or supervisors will immediately notify the LRS upon learning of any threatened or proposed ULP charge against their organization or activity.

3 ULP Charges Filed Against Labor Organization. Management may also utilize the list of ULP charges identified in 3-2b(1) above. Additionally, management may file an Unfair Labor Practice charge against a labor organization for organizing or conducting a strike, work stoppage, slowdown, or picketing if such picketing interferes with the activity's operations.

4 Job Actions. 5 U.S.C. 7116(b)(7)(B) prohibits threatened or actual strikes, work stoppages, slowdown, or picketing that interferes with an activity's operations. When such actions are threatened or occur, managers will immediately notify the HRO. The HRO will provide appropriate guidance on disciplinary actions to be taken, investigations required and if the labor organization is involved LRS will prepare a ULP for the FLRA.

5 FLRA Investigations.

- a. The Regional Office of the FLRA is required by law to investigate all ULP complaints.
- b. Representatives of the FLRA will:
 - (1) Coordinate their investigative activities with the LRS.
 - (2) Be escorted by the LRS or a HRO designee to any facility or employee.
- c. Managers will not participate in any discussions or interviews regarding the activity or employees without prior approval of the LRS or HRO.

CHAPTER 4

NEGOTIATED GRIEVANCE AND ARBITRATION PROCEDURES

1 General. Negotiated grievance and arbitration procedures are established and explained by the collective bargaining agreement. This chapter establishes the Kansas National Guard policy, organizational and functional responsibilities, as well as procedural requirements in such matters.

2 Representation.

a. A grievant can be accompanied, represented, and advised by a representative of his or her own choosing. The representative's service must not result in a conflict or apparent conflict of interest or position. The service also cannot conflict with the priority needs of the activity, or cause unreasonable costs to the Government. Management will not select a grievant's representative. The grievant must make all arrangements for a representative.

b. Representatives must be designated in writing. The representative's name will be sent through the grievant's immediate supervisor to the LRS. Any change in representative will also be in writing. If the representative is a current employee, the LRS will provide the representative's supervisor with a copy of the designation.

c. Management may disapprove a technician's choice of representative at any time if the provisions of paragraph 4-2a above are not met.

d. The representative must obey the same rules of conduct and procedures as the technician. If the representative does not, the supervisor should report this action to the LRS. If the LRS agrees, the supervisor will be informed to give the technician one of the following choices:

- (1) Pick another representative; or
- (2) Forgo representation

e. A technician may use reasonable amounts of official time to act as a representative. Their supervisor must approve their use of official time. However, official time will not be granted to a technician for repeated service as a representative when it interferes with the performance of regular duties. In this situation, supervisors will contact the LRS for specific guidance.

3 Organizational Responsibilities.


a. At the State Headquarters level, the HRO is the office of primary responsibility for the processing and arbitration of grievances under the negotiated procedure. The LRS is responsible for ensuring appropriate coordination with the SJA in grievance arbitration matters.

b. Where the SJA serves as management's representative in arbitration proceedings, the HRO or LRS remains responsible for providing policy direction and technical advice to the SJA in all phases of the case.

4 Supervisory Responsibilities.

- a. Supervisors, when told by the bargaining unit technician that they are initiating a grievance, are to follow procedures established by the negotiated agreement. Supervisors should be aware that a work site complaint is not a grievance unless the technician declares it as one.
- b. Supervisors must investigate grievances thoroughly and reply to the technician within the negotiated time limits. The time limits established are for the supervisors' protection as well as the technicians. Supervisors should use the maximum amount of time allotted if needed.
- c. Grievances, which are initiated at any level, must be reported to the LRS as soon as possible.

FOR THE ADJUTANT GENERAL:


KATHRYN L. HULSE, Col, KSANG
Human Resources Officer

APPENDIX A TPP 711

GLOSSARY AND LABOR RELATION TERMS

Agreement. A collective bargaining agreement between the employer and the exclusive representative. A collective bargaining agreement must contain a negotiated grievance procedure. Also defined as a written agreement between an employer and a labor organization, usually for a definite term, defining conditions of employment, rights of handling issues that arise during the life of the agreement. [Also known as Agreement, CBA, Contract, Labor-Management Agreement or Negotiated Agreement.]

Arbitration. Method of resolving employment disputes through recourse to an impartial third party whose decision is usually final and binding.

Bargaining Unit. A group of employees recognized by the employer or group of employers, or designated by the Federal Labor Relations Authority as appropriate to be represented by a labor organization for purposes of collective bargaining. In the Federal sector, employees do not have to be dues paying members of a union in order to be represented by the union.

Confidential Technician. Means a technician who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of Labor-Management Relations.

Contract Administration. The process of interpreting and applying the terms of a labor agreement to workplace situations.

Dues. The monetary payment employees authorize for payment to a union that has been certified as the exclusive representative of a bargaining unit.

FLRA. The Federal Labor Relations Authority, an administrative body empowered by Title VII of the Civil Service Reform Act of 1978 which interprets and oversees compliance with the Federal Service Labor-Management Relations Statute.

Formal Discussion. Under 5 U.S.C. 7114 (a) (2) (A), a discussion between an agency representative(s) and a bargaining unit employee(s) concerning any grievance or any personnel policy or practice or other condition of employment which affects bargaining unit employees. The exclusive representative must be given the opportunity to be represented at these meetings.

GC. General Counsel.

Grievance. Any complaint by an employee concerning any matter relating to the employment of the employee; by a labor organization concerning any matter relating to the employment of an employee; or by a labor organization, an agency, or an employee concerning interpretation or violation of the collective bargaining agreement or a violation, interpretation or application of a law, rule or regulation affecting

conditions of employment. Whether a complaint is formally recognized and handled as a grievance depends on whether the subject of the complaint is covered under the grievance procedure.

HRO. Human Resources Officer

LRS. Labor Relations Specialist.

Management Official. An individual who formulates, determines, or influences the policies of the agency. Such individuals are excluded from appropriate units.

Management Rights. The right of management to make day-to-day personnel decisions and to direct the workforce without notification to or consultation with the exclusive representative. Any changes in the exercise of these rights, however, would require notice to the exclusive representative and negotiations upon demand, if requested in a timely manner, on the impact and implementation of the decision. [See 5 U.S.C. 7106]

NGB. National Guard Bureau.

Official Time. Duty time that is granted to employees acting on behalf of the exclusive representative to perform representational duties without loss of pay or charge to an employees leave account. Official time may not be granted for internal union business
[See 5 U.S.C.7131].

OPM. Office of Personnel Management.

RD. Regional Director

Representational Activities. Those activities carried out by union representatives on behalf of members of the bargaining unit, as opposed to those which merely involve the internal business of the union as an entity.

SJA. Staff Judge Advocate

Supervisor. Under 5 U.S.C.7103, an individual employed by an agency having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove unit employees; adjust their grievances or to effectively recommend such action. The performance of one or more of these duties qualifies an employee as a "supervisor "for labor relations purposes and excludes the employee from the bargaining unit. However, nurses and firefighters must spend a preponderance of their time doing so to be considered supervisors.

* Note AGR soldiers that supervise Military technicians must follow the LMR program and labor agreement. Many AGR soldiers perform the tasks as described above.

Unfair Labor Practice. Action by either an employer or union which violates rights granted by the Federal Service Labor-Management Relations Statute. The agency, union or employees may file a ULP complaint. [See 5 U.S.C.7116]

U.S.C. United States Code